IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:20.01.2007

CORAM:

THE HON'BLE MR. JUSTICE P. SATHASIVAM
AND
THE HON'BLE MR. JUSTICE N. PAUL VASANTHAKUMAR

WRIT APPEAL Nos.2524 of 2001 & 253 of 2002

1.T. Subbaraman
2.T. Venkataramani
3.Rajalakshmi
4.4.K. Sasidhar
5.S.Saylya .. Appellants in
WA.No.2524/01/Petitioners

1.S. Sekhar
2.V.S. Kumar
3.V.Vijayalakshmi .. Appellants in
WA.No.253/02/Petitioners

vs.

1.Sri Vedanda Desikar Devasthanam
Mylapore, Madras 600 004.

2.The Commissioner
Hindu Religious & Charitable
Endowment Board
Nungambakkam High Road
Chennai 600 034. .. Respondents in
both the appeals/Respondent

Writ Appeals filed under Clause 15 of the Letters Patent against the common order of His Lordship Mr. Justice E. Padmanabhan made in W.P.No.20918 of 1992 and W.P.No.5365 of 1991 dated 31.07.2001.

W.P.No.20918 of 1992 and W.P.No.5365 of 1991:- Petitions Presented under Article 226 of the Constitution of India to issue Writs of (i) Certiorarified Mandamus calling for the records of the first respondent in his proceedings No. 94945/900/R-2 dated 10.11.1991 quash the same in so far as the petitioners are concerned and directing the respondents to act in pursuance and fulfillment of the first respondent's order No. 94945/90/R-2 dated 20.6.1991 (in WP.No.20918/92); and

(ii) Mandamus directing the second respondent to grant sanction under section 34(1) of Hindu Religious and charitable Endowments Act on the proforma dated 14.4.1988 submitted by the

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

first respondent authorizing the sale of Plot No. 33B, Alarmelmanga puram, Madras 600 004 to the petitioners at Rs.1.25 lakhs per ground (in WP.5365/91) respectively.

For appellants : Mr. R. Krishnasamy, Sr.Counsel
in WA.2524/01 for Mr. C. Ramesh

For appellants : Mr. V.P. Sengottuvel
in WA.253/02

For respondents : Mr. T.V. Ramanujam,Sr.Counsel
for Mr. N.C. Ramesh for R.1

Mr. K. Elango
Special Govt., Pleader for R.2
..

COMMON JUDGMENT
(Judgment of the Court delivered by P. SATHASIVAM,J.)

Aggrieved by the common order of the learned single Judge dated 31.07.2001, the petitioners in W.P.No.20918 of 1992 preferred Writ Appeal No.2524 of 2001 and the petitioners in W.P.No.5365 of 1991, preferred Writ Appeal No.253 of 2002.

2. For convenience, we shall refer the parties as arrayed before the learned single Judge.

3. The case of the petitioners in W.P.No.20918 of 1992 is as follows:

(a) The petitioners are lessees of plots of land belonging to the second respondent temple, Sri Vedantha Desikar Devasthanam, Mylapore, Chennai and they are enjoying the same by putting pucca terraced houses, for more than 60 years. Though their lease period expired and had to be extended in 1985, extension could not be granted in view of the first respondent's [The Commissioner of Hindu Religious and Charitable Endowment (H.R.& C.E.) Department] Memo dated 22.05.1985, rejecting the proposal for extension of lease, but simultaneously declaring that such plots could be sold if the lessees agreed to purchase the plots. After correspondence, the same position was reiterated by the Deputy Secretary to Government of Tamil Nadu, H.R. & C.E. Department, by letter dated 24.04.1987 adding that the price would be at the rate of Rs.1.25 lakhs per ground. The petitioners gave their acceptance to buy the plots at this rate by their letter dated 22.01.1988. Though the second respondent expressed willingness to sell the plots to the petitioners for the said price in their letter dated 14.04.1988, and forwarded necessary proforma in respect of the plots, as prescribed under Section 34 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (in short, 'the Act') to the first respondent, there was no response at all from the office of the first respondent. Several reminders were sent to the the first respondent, but in vain.

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

(b) On 26.06.1991, the first respondent passed an order according sanction for sale of plots to the petitioners at the same agreed rate of Rs.1.25 lakhs per ground, however, to be paid with interest from 1987 and requiring acceptance from the petitioners. The acceptance of the petitioners were communicated to the first respondent by their letter dated 27.06.1991. Even after receipt of such acceptance, the respondents kept quiet for more than a year, and by order dated 10.11.1992, fixed the price of the plots at the exorbitant rate of Rs.340.70 per sq.ft., that is, Rs.5 lakhs per ground, without reference to any of the earlier proceedings. Aggrieved by the same, the petitioners filed W.P.No.20918 of 1992 to quash the said order and for direction to the respondents to act in pursuance and fulfillment of the first respondent's order No.94945/90/R-2 dated 20.06.1991.

4. The first respondent, the Commissioner, H.R.&C.E. Department filed a counter affidavit, wherein it is stated that the administration of Arulmighu Vedantha Desikar Temple, Mylapore, Chennai is governed by a scheme framed by the High Court, Madras in C.S.No.253 of 1907. The temple owns about 80 grounds of lands in Alarmelumanga Agraharam and about 32 grounds in Venkatesa Agraharam in Mylapore, Chennai. In Application No.172 of 1932 in C.S.No.253 of 1907, the High Court, Madras, permitted the trustees of the temple to lease out the plots owned by the temple for a period of 50 years. The period of lease expired on 07.05.1982. On 28.04.1975, the temple authorities had submitted an application under Section 34 of the Act seeking permission to sell certain plots to the lessees, who are in possession of the same. The land value was fixed at Rs.8,000/- per ground. Subsequently, the rate was enhanced to Rs.75,000/- per ground. In 1985, when the temple authorities proposed to sell the plots to certain occupants, the District Collector, Madras was asked to furnish the market value of the land and the Collector, in his letter dated 19.08.1985 reported the value of land at Rs.1.25 lakhs per ground. Accepting the value of land as reported by the Collector, Madras and observing all the procedures laid down under Section 34 of the Act, necessary orders were passed in Application No.21 of 1986 dated 06.05.1987 to sell the plots to the lessees who are in possession at the rate of Rs.1.25 lakhs per ground.

5. On 20.05.1987 and 29.08.1987, the writ petitioners made representation requesting the Government to sell the plots in their possession. The Government in their letter dated 24.04.1987, instructed the petitioners to contact the Commissioner, H.R. & C.E., Department, if they are willing to purchase the plots at the rate of Rs.1.25 lakhs per ground. In the meanwhile, the Trustees of the temple objected to the price fixed at the rate of Rs.1.25 lakhs per ground. Thereafter, the guideline value was obtained from the Sub-Registrar, Mylapore, Chennai in letter dated 23.03.1992 wherein the value of the land is stated to be Rs.265/- per sq.ft. at Alarmelumanga Agraharam and Rs.240.70 per sq.ft. at Venkatesa Agraharam. In view of the increased market value of the land, the first respondent asked the petitioners to give their consent to purchase the land at the

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

prevailing market rate at Rs.265 and 240.70 per sq.ft. along with 30% solatium, by proceedings dated 10.11.1992. As against the said communication, the petitioners have filed the writ petition. Since the value of the land has gone up several times than the originally fixed value, viz., Rs.1.25 lakhs per ground during the interregnum period, in the interest of religious institution, the trustees of the temple objected to the value fixed, viz., Rs.1.25 lakhs per ground and according to them, the land would fetch a price of more than Rs.10 lakhs per ground. It is for the authorities to decide whether the sale is beneficial to the religious institution and order for disposal of the immovable property under Section 34 of the Act. No order has so far been passed under Section 34 of the Act in favour of the writ petitioners. The petitioners have got alternative remedy under Section 114 of the Act and hence, the writ petition is not maintainable.

6. The second respondent, Sri Vedantha Desikar Devasthanam, Mylapore, Chennai filed a counter affidavit stating that as per G.O.No.855, Revenue dated 15.02.1960, no exchange, sale or mortgage or any lease for a term exceeding five years of immovable property belonging to or given or endowed for the purpose of religious institution, shall be made without following the procedure as contemplated under the Rules made under the Act. Therefore, the petitioners cannot straight-away ask for a Mandamus directing the respondents to sell the property without following the said Rules. Any sale can be made only after following the procedure contemplated under Section 34 of the Act and the Rules made thereunder.

7. The learned single Judge, by common order dated 31.07.2001, after finding that there is no consent given by the Trustees of the second respondent Devasthanam, and since the conditions prescribed under Section 34 of the Act have not been complied with, there cannot be any Mandamus either to compel the temple to alienate or direct the Commissioner or the State Government to accord approval, dismissed all the writ petitions. Aggrieved by the said order, as stated above, the present appellants have filed the above appeals.

8. Heard Mr. R. Krishnasamy, learned senior counsel and Mr. V.P. Sengottuvel, learned counsel for the appellants and Mr. T.V. Ramanujam, learned senior counsel and Mr. K. Elango, learned Special Government Pleader for the respondents.

9. It is not in dispute that the petitioners are lessees under the second respondent Devasthanam. Based on the communication/correspondence, they sought direction for sale of the lands of Devasthanam as agreed earlier. Though initially, the Commissioner, H.R. & C.E. Department permitted the Devasthanam to sell the lands to the respective lessees at the rate of Rs.1.25 lakhs per ground, the same was not materialised, since some of them approached this Court by way of writ petitions. It is not in dispute that the earlier writ petitions were dismissed. Now, by the letter dated 10.11.1992, the Commissioner, H.R. & C.E.

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

Department intimated the petitioners that the land cost has been fixed at the rate of Rs.240.70 and Rs.265/- per sq.ft. In the same letter, it is also stated that in addition to the said amount, a solatium at 30% is required to be paid. The said communication was challenged by the lessees in order to ascertain whether the earlier proceedings/offer/order of the H.R.& C.E. Department are binding on the respondents. Inasmuch as the lands belong to the Devasthanam, let us consider the relevant provisions. Section 34 of the Act speaks about 'Alienation of immovable Trust property'.

> "Section 34. Alienation of immovable Trust property (1) Any exchange, sale or mortgage and any lease for a term exceeding five years of any immovable property, belonging to, or given or endowed for the purposes of, any religious institution shall be null and void unless it is sanctioned by the Commissioner as being necessary or beneficial to the institution.
>
> Provided that before such sanction is accorded, the particulars relating to the proposed transaction shall be published in such manner as may be prescribed, inviting objections and suggestions with respect thereto; and all objections and suggestions received from the trustee or other persons having interest shall be duly considered by the Commissioner.
>
> Provided further that the Commissioner shall not accord such sanction without the previous approval of the Government.
>
> Explanation-Any lease of the property above mentioned though for a term not exceeding five years shall, if it contains a provision for renewal for a further term (so as to exceed five years in the aggregate) whether subject to any condition or not be deemed to be a lease for a period exceeding five years.
>
> (2) When according such sanction the Commissioner may impose such conditions and give such directions as he may deem necessary regarding the utilisation of the amount raised by the transaction the investment thereof and in the case of a mortgage, regarding the discharge of the same within a reasonable period.
>
> (3) A copy of the order made by the Commissioner this section shall be communicated to the Government and to the trustee and shall be published in such manner as may be prescribed.
>
> (4) The Trustee may within three months from the date of his receipt for copy of the order, and any person having interest may, within three months from the date of the publication of the order, appeal to the Court to modify the order or felt it aside.

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

(4-A) The Government may issue such directions to the Commissioner as in their opinion are necessary, in respect of any exchange, sale mortgage or lease of any immovable property, belonging to, or given or endowed for the purpose of, any religious institution and the Commissioner shall give effect to all such directions.

(5) Nothing contained in this section shall apply to the inams referred to in section 41."

10. It is not in dispute that a sale or mortgage or any lease for a term exceeding five years of any immovable property has to satisfy and fulfill the conditions prescribed in Section 34 (1) of the Act. The above provision makes it clear that before a sale, mortgage or lease for more than five years, there must be a sanction by the Commissioner, and there must be a specific finding by the Commissioner to the effect that the same is necessary for or beneficial to the institution. After such conclusion by the Commissioner, before sanction is accorded, the proposed transaction shall be published in prescribed manner inviting objections and suggestions with respect thereto and all objections and suggestions received from the trustees or other persons having interest are to be duly considered by the Commissioner. The second proviso to sub-section (1) makes it clear that the Commissioner shall not accord such sanction without the previous approval of the Government. In other words, when the lands belong to religious institution, without compliance of the conditions prescribed in Section 34, no sale, mortgage or lease exceeding a period of five years is permissible.

11. With the above background, let us consider the question whether the claim of the petitioners is permissible? As said earlier, all of them are lessees under the second respondent temple. Mr. R. Krishnasamy, learned senior counsel and Mr. V.P. Sengottuvel, learned counsel for the appellants have brought to our notice various letters/communications between the appellants and the respondents. As early as on 04.07.1995, the second respondent temple asked the appellants and others, whether they are willing to purchase the land at the rate to be fixed by the Commissioner, H.R. & C.E. Department. In letter dated 22.05.1985, the Deputy Commissioner, H.R. & C.E. Department intimated the Devasthanam that renewal of lease for a further period of 50 years is not advisable and suggested that if the lessees are willing to agree the price to be fixed by the Commissioner for purchase of the lands in their possession, further action may be taken. In the meanwhile, some of the lessees filed W.P.No.8562 of 1984 before this Court. The appellants in their letter dated 19.07.1985 informed the trustees of the second respondent Devasthanam that they will abide by the judgment of the High Court in the said writ petition and requested the temple not to take any further steps before any order being passed by the High Court. Thereafter, the second respondent temple sent a letter to the

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

petitioners stating that the Writ Petition No.8562 of 1984 had been dismissed on 03.09.1986 and asking the petitioners to inform about their concurrence for the purchase of the land at the price fixed by the Commissioner, H.R.&C.E. for taking further course of action. In the letter dated 24.04.1987 addressed to one of the lessees, the Assistant Secretary, Commercial Taxes Department, Chennai-9 mentioned that the Commissioner, H.R. & C.E. has fixed the minimum price at Rs.1.25 lakhs per ground in respect of the land belonging to Arulmighu Shri Vedhantha Desikar Devasthanam, Mylapore. Pursuant to the same, by letter dated 21.01.1988, the petitioners and others consented to purchase the land at the rate of Rs.1.25 lakhs per ground as recommended by the Commissioner, H.R. & C.E. In the same letter they requested the Commissioner to issue instructions to Devasthanam to take necessary steps to sell the leased lands to them at the said rate viz. Rs.1.25 lakhs per ground at an early date. By letter dated 14.04.1988, the second respondent Devasthanam forwarded necessary proforma in respect of the plots belonging to them to the Commissioner, H.R. & C.E. Department as prescribed in Section 34 of the Act with a request to issue necessary sanction. Meanwhile, one C.S.Subramaniam, Convenor made reminder dated 24.11.1988 and 08.06.1989 requesting the commissioner to pass appropriate orders to enable the lessees to purchase the lands at an early date.

12. It is further seen that because there was no action taken by the respondents, One Subramaniam and Balachandran filed W.P.No.16846 of 1990 before this Court praying for appropriate direction to the Commissioner, H.R. & C.E. to act under Section 34 of the Act on the representation made by them in their letter dated 20.02.1990. In the said writ petition, by order dated 05.11.1990, the learned single Judge, directed the second respondent to consider the request of the petitioners under Section 34(1) of the Act and pass orders within eight weeks from the date of receipt of copy of the order. Again, a reminder was sent to the Commissioner on 22.12.1990. By letter dated 20.06.1991, the Commissioner H.R. & C.E. Department required the Assistant Commissioner, H.R. & C.E., Chennai to obtain permission from named eight persons whether they are agreeable to pay Rs.1.25 lakhs per ground along with interest from 1987. By letter dated 27.06.1991, the Convenor, C.S.Subramaniam forwarded consent letters of lessees agreeing for the terms prescribed by the Commissioner. Since there was no response, the appellants sent another representation on 27.06.1991 requesting to take early action.

13. It is the grievance of Mr.R.Krishnasamy, learned senior counsel that in spite of the above correspondence, on 10.11.1992, the Commissioner has fixed land cost at the rate of Rs.240.70 and Rs.265/- per sq.ft. as per the guideline value obtained from the Sub-Registrar, Mylapore, Chennai and also demanded 30% of the cost as solatium in addition to the above mentioned land cost. According to him, when the respondents offered to sell the lands at the rate of Rs.1.25 lakhs per ground at one point of time and then, with interest from 1987 at later point of time, which was

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

agreed by the petitioners/lessees and duly communicated to the respondents, the respondents are not now justified in fixing the price at the rate of Rs.240.70 and Rs.265/- per sq.ft. We are unable to accept the said contention. As rightly pointed out by Mr. T.V. Ramanujam, learned senior counsel, first of all, there is no specific order by the Commissioner, H.R. & C.E. Department after complying with the provisions of section 34 (1) of the Act. In addition to the same, according to him, the Commissioner has not obtained previous approval from the Government. He also pointed out that in view of the dismissal of the earlier writ petition, the petitioners/appellants are not entitled to any relief in these proceedings.

14. Though the learned senior counsel for the appellants has brought to our notice several letters/correspondence/ communications between the appellants and the respondents, as rightly pointed out by Mr. T.V.Ramanujam, learned senior counsel for Devasthanam, there is no order by the competent authority after satisfying the statutory provision. In the light of Section 34(1) of the Act, which we have already extracted and in view of the fact that no sanction has been accorded by the Government, we are of the view that there cannot be any direction by this Court to compel the respondents to sell the lands belonging to the religious institution in favour of the petitioners.

15. In the Superintending Engineer, Tamil Nadu Electricity Board and another v. M/s.Krishna Alloys [2005 (4) LW 585], the Division Bench of this Court, while considering the scope of interference by exercising writ jurisdiction, held that it is not open to a High Court Judge to pass whatever order he likes in writ jurisdiction. It is further held that there are well settled principles for exercise of writ jurisdiction and a writ cannot be issued on grounds of sympathy alone. The Bench further pointed out that when no error of law apparent on the face of the record, nor violation of any law has been pointed out, a writ cannot be issued. Though Mr. Krishnasamy, learned senior counsel for the appellants relied on certain decisions in support of the claim of the petitioners, in view of the factual details and the non-compliance of statutory provision, viz., Section 34(1) of the Act, we are of the view that it is unnecessary to refer the same.

16. The learned Single Judge, taking note of all the above mentioned factual aspects, statutory provisions as well as earlier order of this Court, rightly rejected the claim of the petitioners and dismissed their writ petitions. We are in agreement with the conclusion arrived at by the learned Single Judge and we are also of the view that the lessees cannot either compel the religious institution to sell or seek direction to the competent authority to accord sanction under Section 34 of the Act. In other words, no writ as prayed for can be issued either to compel the Devasthanam to alienate or to direct the Commissioner, H.R. & C.E., or the State Government to accord approval for sale of property of religious institution, unless the mandatory requirement of Section 34 are satisfied. As rightly pointed out by the learned senior counsel for the Devasthanam, it is the bounden duty of the

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

trustees of the temple to secure maximum advantage to the trust/temple and without their consent, even the Commissioner cannot sanction or pass orders for sale of their properties.

Under these circumstances, we are in entire agreement with the conclusion arrived at by the learned Judge. Consequently, both the writ appeals fail and they are dismissed. No costs.

kh

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

The Commissioner
Hindu Religious & Charitable
Endowment Board
Nungambakkam High Road
Chennai 600 034.

+ 3 ccs to the Government Pleader, SR Nos. 3572, 3751, 3750

+ 1 cc to Mr. C. Ramesh, Advocate, SR No.3531

+ 1 cc to Mr. V.P. Sengottuvel, Advocate, SR No.3606

NG(CO)
SR/3.2.2007

Judgment
in

W.A.Nos.2524/01 & 253/02

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/